

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS NUMBER: 04-0139**  
**Underground Storage Tank Fees**  
**For The Tax Periods 1991-2003**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

**I. Underground Storage Tank Fees – Imposition**

**Authority:** Ind. Code § 6-8.1-1-1, Ind. Code § 6-8.1-1-6, Ind. Code § 13-11-2-150; Ind. Code § 13-11-2-158; Ind. Code § 13-23-12-1; Ind. Code § 29-1-7-23; *Ind. Dept. of State Revenue v. Estate of Riggs*, 735 N.E.2d 340 (Ind. Tax 2000)

Taxpayer protests the assessment of the underground storage tank owner registration fee.

**STATEMENT OF FACTS**

Taxpayer was assessed underground storage tank fees for the periods of 1991 through 2003. Taxpayer is the estate of a decedent ("Decedent") who operated a gas station prior to his death on October 2, 2001. Decedent had operated the gas station jointly with his brother, who passed away on January 8, 1999 and whose interest in the real estate on which the filling station was located passed to Decedent. Taxpayer protests the assessment of the fees for the years in question.

**I. Underground Storage Tank Fees – Imposition**

**DISCUSSION**

The underground storage tank fee is administered by the Indiana Department of Revenue per IC § 6-8.1-1-6 which states in relevant part: "The provisions of this article apply for the purposes of imposing, collecting, and administering the listed taxes." The fee is based on IC §13-23-12-1 and constitutes a listed tax by inclusion in the definition of "Listed taxes" at IC § 6-8.1-1-1.

IC 13-23-12-1 states:

- (a) Each year the owner of an underground storage tank that has not been closed before July 1 of any year under:

- (1) rules adopted under IC 13-23-1-2; or
  - (2) a requirement imposed by the commissioner before the adoption of rules under IC 13-23-1-2;
- shall pay to the department of state revenue an annual registration fee.
- (b) The annual registration fee required by this section is as follows:
    - (1) Ninety dollars (\$90) for each underground petroleum storage tank.
    - (2) Two hundred forty-five dollars (\$245) for each underground storage tank containing regulated substances other than petroleum.
  - (c) If an underground storage tank consists of a combination of tanks, a separate fee shall be paid for each tank.

The term "owner" is defined by Ind. Code § 13-11-2-150, which states:

- (a) "Owner", for purposes of IC 13-23 except as provided in subsection (b), means:
  - (1) for an underground storage tank that was:
    - (A) in use on November 8, 1984; or
    - (B) brought into use after November 8, 1984;for the storage, use, or dispensing of regulated substances, a *person* [emphasis added] who owns the underground storage tank; or
  - (2) for an underground storage tank that is:
    - (A) in use before November 8, 1984; but
    - (B) no longer in use on November 8, 1984;a person who owned the tank immediately before the discontinuation of the tank's use.
- (b) "Owner", for purposes of IC 13-23-13, does not include a person who:
  - (1) does not participate in the management of an underground storage tank;
  - (2) is otherwise not engaged in the:
    - (A) production;
    - (B) refining; and
    - (C) marketing;of regulated substances; and
  - (3) holds indicia of ownership primarily to protect the owner's security interest in the tank.

Further, Ind. Code § 13-11-2-158 states in relevant part:

- (a) "Person", for purposes of:
  - (1) IC 13-21;
  - (2) air pollution control laws;
  - (3) water pollution control laws; and
  - (4) environmental management laws, except as provided in subsections (c), (d), (e), and (h);means an individual, a partnership, a copartnership, a firm, a company, a corporation, an association, a joint stock company, a trust, *an estate* [emphasis added], a municipal corporation, a city, a school city, a town, a school town, a school district, a school corporation, a county, any consolidated unit of government, political subdivision, state

agency, a contractor, or any other legal entity.

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(d) "Person", for purposes of IC 13-23, has the meaning set forth in subsection (a). The term includes a consortium, a joint venture, a commercial entity, and the United States government.

Taxpayer states that it did not own the property where the tanks were situated until October 2001. Further, Taxpayer states that Decedent's estate is also not the proper taxpayer because the interest in the property transferred to the decedent's heirs at the time of his death, and cites *Ind. Dept. of State Revenue v. Estate of Riggs*, 735 N.E.2d 340 (Ind. Tax 2000) for that proposition. With respect to the period prior to Decedent's death, Taxpayer was not the owner of the property in question. While the legal ownership passes to Decedent's heirs at the moment of death, an estate is an intermediary step to effect that transfer, and until the final transfer of title is effected, the estate, as a separate entity, is acting as a fiduciary for those heirs. Ind. Code § 29-1-7-23. At the time of billing, Taxpayer was the owner of the property, as defined by Ind. Code § 13-11-2-150, until such time as the property could properly be titled in the name of decedent's heirs. Further, within the meaning of Ind. Code §§ 13-11-2-150 and -158, Taxpayer, an estate, is a person responsible for payment of the fees in question, and thus is liable under Indiana law.

### **FINDING**

The Taxpayer's protest is sustained in part and denied in part. Taxpayer is not liable for any fees due prior to October 2, 2001. However, Taxpayer is liable for fees subsequent to the aforementioned date to present.